

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GREGORY SEAN GORAK,

Plaintiff,

v.

JOHN PAQUIN and RICH RAEMISH,

Defendants.

ORDER

11-cv-130-bbc

Plaintiff Gregory Gorak, a prisoner at the Fox Lake Correctional Institution in Fox Lake, Wisconsin, has submitted a proposed complaint. Because plaintiff is a prisoner, he is subject to the 1996 Prisoner Litigation Reform Act. This means that before this court may decide whether he can proceed with his complaint *in forma pauperis*, plaintiff will have to make an initial partial payment of the filing fee. Although, plaintiff submitted a check in the amount of \$3.50 which he asks the court to apply as his initial partial payment, his initial partial payment cannot be calculated at this time because he has not submitted a trust fund account statement with his complaint.

It appears that plaintiff has not submitted a trust fund account statement because he wishes to use money in his release account to pay the \$346.50 balance of the filing fee. Although this court appreciates the initiative plaintiff has shown to pay the full filing fee up front, he cannot use his release account funds in the manner he requests. Plaintiff should be aware that the language of 28 U.S.C. § 1915(b)(1) suggests that prison officials are required to use a prisoner's release account to satisfy an *initial partial payment* if no other funds are available, *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). The state of Wisconsin has conceded that this provision of the Prison Litigation Reform Act supersedes any restrictions state law imposes on the availability of funds in a prisoner's release account. However, the law does not authorize or require court officials to use funds in an inmate release account to pay the full

amount of the filing fee. Because plaintiff cannot use his release account funds to pay the entire \$350 filing fee, I will deny his motion. However, if after plaintiff has submitted his trust fund account statement and an initial partial payment has been assessed, he can show that sufficient funds do not exist in his regular account to pay the assessed amount, he should be allowed to use his release account funds to pay some or all of the initial partial payment.

Plaintiff's complaint was submitted on February 15, 2011. His trust fund account statement should cover the six-month period beginning approximately July 15, 2010 and ending approximately February 15, 2011. Once plaintiff has submitted the necessary statement, I will calculate his initial partial payment, less the \$3.50 check he has already submitted, and advise him of the amount he will have to pay before the court can screen the merits of his complaint under 28 U.S.C. § 1915(e)(2).

ORDER

IT IS ORDERED that

1. Plaintiff Gregory Gorak's motion to use release account funds to pay the \$350 filing fee, is DENIED.
2. Plaintiff may have until March 18, 2011, in which to submit a trust fund account statement for the period beginning approximately July 15, 2010 and ending approximately February 15, 2011. If, by March 18, 2011, plaintiff fails to respond to this order, I will assume that he wishes to withdraw this action voluntarily. In that event, the clerk of court is directed to close this file without prejudice to plaintiff's filing his case at a later date.

Entered this 25th day of February, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge